

REMARKS

The Applicant appreciates the time taken by the Examiner to review the Applicant's present application. This application has been carefully reviewed in light of the Examiner's comments, including the Office Action mailed March 19, 2008. The Applicant respectfully requests reconsideration and favorable action in this case.

Summary of rejections and amendments

The Examiner rejected claims 1-9, 11-19 and 21-22 under 35 U.S.C. §102, and claims 4, 6-7, 11-16, 18-19 and 21-22 under 35 U.S.C. §103. Claims 1-9, 11-19 and 21-22 are pending in the application.

Amended declarations

The Examiner pointed out that the declarations submitted by the Applicant on February 14, 2008 were ineffective because they did not include acknowledgment by the declarants that willful false statements and the like are punishable by fine or imprisonment or both (18 U.S.C. 1001) and may jeopardize the validity of the application or any patent issuing thereon. The Applicant submits herewith revised declarations by Keith L. Berrier and Dirar S. Khoury which include such acknowledgments. The Applicant respectfully requests that the Examiner consider the revised declarations in support of the arguments set forth in the Applicant's February 14, 2008 response.

Rejections under 35 U.S.C. §102

Claims 1-3, 5 and 8-9 are rejected under 35 U.S.C. §102(a) as being anticipated by "TR02-17: CAAM Department Technical Reports 2002" ("TR02-17"). The Applicant respectfully traverses this rejection.

As pointed out by the Examiner, 35 U.S.C. §102(a) states that a person shall be entitled to a patent unless "the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent". It is assumed that the Examiner believes TR02-17 to be a printed publication which describes the invention and which was published prior to the Applicant's invention.

The Applicant, Keith Berrier, submits herewith a declaration (the "Berrier declaration") which states that TR02-17 was not published or available until March 27, 2003, which is after the filing date of the present application (see paragraph 5.) Consequently, TR02-17 was not a printed publication before the invention was made by the Applicant, and is not prior art with respect to the invention.

Even if TR02-17 could be considered to have been published as of December 2002, the invention was necessarily made before the publication of this report, as TR02-17 was written by the Applicant based upon the Applicant's invention (paragraphs 2, 3, 5.) For this reason as well, TR02-17 was not a printed publication before the invention was made by the Applicant, and is not prior art with respect to the present invention.

Claims 1-9, 11-19 and 21-22 are rejected under 35 U.S.C. §102(a) as being anticipated by "Solving the Inverse Problem of Electrocardiography Using a Duncan and Horn Formulation of the Kalman Filter" ("Solving the Inverse Problem"). The Applicant respectfully traverses this rejection.

The Berrier declaration points out that "Solving the Inverse Problem" was confidentially submitted to IEEE Transactions on Biomedical Engineering and was not published in that journal until March of 2004 (paragraph 4.) Thus, "Solving the Inverse Problem" was not a printed publication before the invention was made by the Applicant, and is not prior art with respect to the invention.

Even if the confidential submission of the paper to the journal could be considered to have been published for the purposes of 35 U.S.C. §102(a) as of the confidential submission of the paper to the journal, such a publication would not have been before the Applicant made the invention, since the Applicant wrote the paper based upon his invention (paragraph 4.) Consequently, "Solving the Inverse Problem" was not a printed publication before the invention was made by the Applicant, and is not prior art with respect to the invention.

The Applicant notes that Dirar S. Khoury, Ph.D. and Danny C. Sorensen, Ph.D., are identified as co-authors of "Solving the Inverse Problem" with the Applicant. As set forth by the Applicant in his declaration, neither Dr. Khoury nor Dr. Sorensen wrote any portion of this article (paragraph 4.) Because "Solving the Inverse Problem" was written solely by the Applicant, this article is not evidence that the invention was known or used by others before it was invented by the Applicant. For this reason as well, "Solving the Inverse Problem" is not prior art with respect to the invention.

The Applicant also submits herewith the declaration of Dr. Khoury, who states that the subject matter of "Solving the Inverse Problem" was conceived and developed by the Applicant, and not by Dr. Khoury. The declaration of Dr. Khoury further supports the Applicant's contention that this article is not prior art with respect to the invention.

For at least these reasons, "Solving the Inverse Problem" cannot anticipate the invention under 35 U.S.C. §102(a).

Rejections under 35 U.S.C. §103

Claims 4, 6-7, 11-16, 18-19 and 21-22 are rejected under 35 U.S.C. §103(a) as being unpatentable over TR02-17. The Applicant respectfully traverses this rejection.

As explained above, TR02-17 was not published, nor was the subject matter of the report known to others before the invention thereof by the Applicant. Thus, TR02-17 is not prior art as to the invention. Consequently, TR02-17 is not sufficient to support a rejection under 35 U.S.C. §103(a). Although the Examiner does not assert that the paper, "Solving the Inverse Problem", is sufficient to support a rejection under 35 U.S.C. §103(a), the Applicant points out that this paper, similar to TR02-17, is not prior art as to the invention and therefore also fails to provide support for an obviousness rejection.

For at least these reasons, the Applicant respectfully submits that the rejection of claims 4, 6-7, 11-16, 18-19 and 21-22 under 35 U.S.C. §103(a) has been overcome.

Conclusion

The Applicant has now made an earnest attempt to place this case in condition for allowance. Other than as explicitly set forth above, this reply does not include an acquiescence to statements, assertions, assumptions, conclusions, or any combination thereof in the Office Action.

For at least the foregoing reasons, the Applicant respectfully requests allowance of all claims pending in the application. The Examiner is invited to telephone the undersigned at the number listed below for prompt action in the event any issues remain.

If any extensions of time are necessary to prevent the above referenced application from becoming abandoned, the Applicant hereby petitions for such extensions. If any fees are inadvertently omitted, or if any additional fees are required, or if any amounts have been

overpaid, please appropriately charge or credit those fees to Deposit Account No. 50-3085 of the Law Offices of Mark L. Berrier.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'M. Berrier', written over a horizontal line.

Mark L. Berrier
Reg. No. 35,066

Dated: _____

4/21/08

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